IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 520 OF 2006
IN
ARBITRATION PETITION NO. 55 OF 2006

M/s. K.A. Pillai & Co.] .. Appellants (Ori.Petitioners)

Versus

1. Union of India & 3 ors.] .. Respondents (Ori.Respondents)

Mr. S.U. Kamdar Mr. Uday Shankar Samudrala for the appellants.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 29TH AUGUST, 2006

P.C. :

. We heard the counsel for the appellant.

2. The counsel would urge that the Arbitral Tribunal committed serious misconduct in communicating with the respondents after the arguments were concluded by both the sides and erred in holding on the basis of submission dated 5.11.2004 sent by the respondent that the respondent No.1 was entitled to retain an amount of Rs.2,59,800/- towards royalty charges for the work carried out by the claimant. The counsel would submit that the learned single Judge seriously erred in

dismissing the Arbitration Petition despite the aforesaid infirmities in the Award passed by the Arbitral Tribunal.

3. We considered the submissions thoughtfully and, in our view, none of the submissions has any merit.

4. The appellant who was the claimant before the Arbitral Tribunal made, *inter alia*, the claim of Rs.14,20,000/- towards payment of royalty charges to the State Government. We are informed by the counsel for the appellant that the said claim was later on modified and reduced to Rs.6,39,920/-.

5. Clause 8.1.2 of the special condition of contract agreement reads thus:

> "**8.1.2** All taxes royalty charges etc. in connection with construction and supply of rubble/sand/stone ballast etc. have to be borne by the contractor. The contractor will be required to obtain a royalty clearance certificate from the concerned Revenue Authority/Collector and produced the same to DEN/Sr.DEN/XEN after completion of the supply but before release of his final bill. If in any case the contractor fails to produce the clearance certificate for Royalty charges an amount equal to the amount of unpaid royalty charge as intimated by the Revenue Authority/Collector or as calculated on the basis of the relevant rates for payment of royalty charges applicable to the area will

be retained from the dues of the contractor. No claim regarding interest charges of delay in payment for retention of this amount would be entertained."

6. It is not in dispute before us that royalty charges were to be borne by the present appellant and the appellant was required to obtain royalty clearance certificate after completion of the supply, but before release of the final bill by the railways (the respondent No.1). Clause 8.1.2 provides that if the contractor (appellant herein) fails to produce the clearance certificate for royalty charges, an amount equal to the amount of unpaid royalty charges or as calculated on the basis of relevant rates for payment of royalty charges shall be retained from the dues of the contractor. It was admitted by the counsel for the appellant before us that the royalty charges which were required to be paid by the appellant to the State Government were, in fact, not paid and, according to him, the reason for this is the dispute between the appellant and the State Government in this regard. It appears from the case set up by the respondent No.1 that an amount of Rs.2,59,800/- was diverted by the Collector, Amravati from the funds deposited for land acquisition by railways with State authorities towards the subject contract against royalty charges. In other words, an amount of royalty of Rs.2,59,800/- which was

payable by the appellant under Clause 8.1.2, in fact, came to be paid by respondent No.1. Even from the counter claim filed by the respondent No.1 before the Arbitral Tribunal, it is seen that the railways agreed to release the amount of Rs.2,59,800/- to the appellant if the appellant produced royalty clearance certificate. That was never done. In this factual matrix, payment of royalty charges to an extent of Rs.2,59,800/- which was the liability of the appellant, came to be discharged by the respondent No.1 in the circumstances noticed above and, therefore, the finding of the Arbitral Tribunal that the respondent No.1 may retain an amount of Rs.2,59,800/- towards royalty charges for the work carried out by the claimant and the adjustment thereof in the Award cannot be faulted.

7. It is pertinent to note that before the learned single Judge it was not disputed by the appellant that an amount of Rs.2,59,800/- was not actually paid by the respondent No.1 to the State Government towards royalty charges. In this backdrop, if the learned Judge found that there was nothing wrong if the Arbitral Tribunal wanted to find from the respondent No.1 about the amount of royalty paid by them, such finding cannot be said to be so erroneous, warranting interference in Appeal. No bias of the

Arbitral Tribunal can be inferred in the facts and circumstances of the case. The Award is not vitiated by any misconduct nor does it suffer from any error of law.

. Appeal has no merit and is dismissed in limine accordingly.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]